

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0779-WQ-E TCEQ ID: RN103138731 CASE NO.: 25315
RESPONDENT NAME: MASON READY MIX, INC.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1451 Landfill Road, Mason, Mason County</p> <p>TYPE OF OPERATION: Concrete production facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 40px;">TCEQ Attorney: Mr. Gary Shiu Litigation Division, MC R-12, (713) 422-8916 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 40px;">TCEQ Enforcement Coordinator: Mr. Michael Meyer, Water Quality Enforcement Section, MC 128, (512) 239-4492</p> <p style="margin-left: 40px;">TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479</p> <p style="margin-left: 40px;">Respondent: Mr. Zach Rabon, President, Mason Ready Mix, Inc., P.O. Box 1935, Mason, Texas 76856</p> <p style="margin-left: 40px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 2, 2004</p> <p>Date of NOE Relating to this Case: November 19, 2004</p> <p>Background Facts: The case was referred to the Litigation Division on September 14, 2007. The EDP RP was filed on November 15, 2007. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and a signed order with initial payment was received on June 11, 2008.</p> <p>WQ: Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual industrial waste water permit or a Texas Pollutant Discharge Elimination System General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)].</p>	<p>Total Assessed: \$6,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$225/\$5,775</p> <p>The Respondent has paid \$225 of the administrative penalty. The remaining amount of \$5,775 shall be payable in 35 monthly payments of \$165 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent submitted a Notice of Intent application for authorization to discharge under TPDES General Permit TXG110000.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 10, 2004

DATES	Assigned	04-Apr-2005	Screening	19-Apr-2005	Priority Due	03-Jun-2005	EPA Due	
	PCW	12-Sep-2007						

RESPONDENT/FACILITY INFORMATION

Respondent	Mason Ready Mix, Inc.		
Reg. Ent. Ref. No.	RN103138731		
Additional ID No(s).			
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	25315	No. of Violations	1
Docket No.	2005-0779-WQ-E	Order Type	1660
Case Priority	3	Enf. Coordinator	Michael Meyer
Media Program(s)	Water Quality	EC's Team	Enforcement Team 8
Multi-Media	N/A		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$6,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No enhancement is recommended because the Respondent has no prior NOV's, final enforcement orders, or environmental audits within the past five years.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The Respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$239
Approx. Cost of Compliance	\$2,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$6,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$6,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$6,000

DEFERRAL

0%

Reduction

Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited cases.

PAYABLE PENALTY

\$6,000

Screening Date 19-Apr-2005

Docket No. 2005-0779-WQ-E

PCW

Respondent Mason Ready Mix, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25315

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN103138731

Additional ID No(s). 0

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Site Address 1451 Landfill Road, Mason, Mason County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement is recommended because the Respondent has no prior NOV's, final enforcement orders, or environmental audits within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 19-Apr-2005

Docket No. 2005-0779-WQ-E

PCW

Respondent Mason Ready Mix, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25315

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN103138731

Additional ID No(s). 0

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

1

Primary Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)

Secondary Rule Cite(s)

Violation Description

The Respondent failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual industrial waste water permit or a Texas Pollutant Discharge Elimination System (TPDES) General Permit, as documented during an investigation conducted on November 2, 2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Harm

OR

Release

Major

Moderate

Minor

Actual

Potential

Percent

>> Programmatic Matrix

Falsification

Major

Moderate

Minor

	X		
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Percent 10%

Matrix Notes

The Respondent failed to comply with 100% of the rule requirement.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 6

mark only one
use a small x

daily	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$6,000

Six monthly events are recommended based on the investigation date (November 2, 2004) and continuing until the screening date (April 19, 2005), to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$239

Violation Final Penalty Total \$6,000

This violation Final Assessed Penalty (adjusted for limits) \$6,000

Economic Benefit Worksheet

Respondent Mason Ready Mix, Inc.

Case ID No. 25315

Reg. Ent. Reference No. RN103138731

Additional ID No(s). 0

Media [Statute] Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,000	01-Jul-2003	19-Nov-2005	2.4	\$239	n/a	\$239
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of submitting a NOI and a storm water pollutant prevention plan. Date required is the start of operations at facility; final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$2,000****TOTAL** **\$239**

Compliance History

Customer/Respondent/Owner-Operator:	CN601671837	Mason Ready Mix, Inc.	Classification: AVERAGE	Rating: 2.750
Regulated Entity:	RN103138731	MASON READY MIX	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	STORMWATER	PERMIT	R08ST0061	
	AIR NEW SOURCE PERMITS	PERMIT	55815	
	AIR NEW SOURCE PERMITS	PERMIT	55804	
Location:	1451 LANDFILL ROAD, MASON, TX, 76856		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	May 18, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 27, 2000 to April 27, 2005			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Kensley Greuter Phone: (512) 239-2520

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |
| 6. Comments: | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/19/2004 (341062)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

Description:

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MASON READY MIX, INC.,
RN103138731**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-0779-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Mason Ready Mix, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, appear before the Commission and together stipulate that:

1. Respondent owned and operated a concrete production facility at 1451 Landfill Road in Mason, Mason County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 24, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand dollars (\$6,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Respondent has paid two hundred twenty-five dollars (\$225.00) of the administrative penalty. The remaining amount of five thousand seven hundred seventy-five dollars (\$5,775.00) of the

administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred sixty-five dollars (\$165.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Respondent has implemented the following corrective measures at the Facility in response to this enforcement action: submitted a Notice of Intent ("NOI") application for authorization to discharge under TPDES General Permit TXG110000.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Respondent is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a) by failing to obtain authorization to discharge storm water associated with industrial activity to

water in the state through an individual industrial waste water permit or a Texas Pollutant Discharge Elimination System ("TPDES") General Permit.

III. DENIALS

Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Mason Ready Mix, Inc., Docket No. 2005-0779-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be

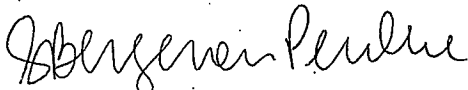
made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Respondent, or three days after the date on which the Commission mails notice of the Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



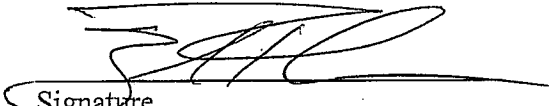
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature


Date

Zach Rabon
Name (Printed or typed)

owner
Title